THE HON'BLE MS JUSTICE J.UMA DEVI

M.A.C.M.A No.2033 of 2010

JUDGMENT:

Challenge in this appeal is made by the Reliance General Insurance Company Limited fixing of the liability to pay the compensation of Rs.1,00,000/- with interest @7.5% p.a along with costs thereon to the claimant in M.V.O.P.No.1126 of 2008 on the file of the VII Additional District Judge, (Fast Track Court), Visakhapatnam on several grounds.

Following are the few important grounds urged by the Insurance Company to disown its liability.

i. The trial Judge failed to see that no eyewitness to the accident is examined by the claimant to prove negligence on the part of the driver of the TATA Sumo bearing registration No.AP31X-2297 (respondent No.2 herein);

ii. The trial Judge failed to see that the claimant himself drove the motorcycle in a rash and negligent manner and hit it to the TATA Sumo bearing registration No.AP31X-2297 driving by respondent No.2 herein;

iii. The trial Judge having observed that the terms and conditions of the policy are breached by respondent No.2 herein, who did not possess transport driving licence at the relevant point of time, had wrongly fastened the initial liability of payment of compensation as against this appellant;

iv. The trial Judge had wrongly given a direction to this appellant to pay the compensation to the claimant first, and then to initiate execution proceedings for recovery of the compensation so paid by it from the vehicle owner whose liability could not be indemnified by it, in view of non-possessing of proper and valid driving licence by respondent No.2, the owner-cum-driver of the TATA Sumo bearing registration No.AP31X-2297;

v. The learned trial Judge without proper appreciation of the evidence of PWs 1 and 2 and Exs.A1 to A13 and Ex.X1, awarded compensation of Rs.1,00,000/-;

In view of the aforementioned grounds urged by the Insurance Company, this court is called upon to answer the following questions.

i. Whether there is any negligence on the part of the claimant in driving of the Motorcycle bearing registration No.AP31AT-732 as has been contended by the appellant-insurance company?

ii. Whether the court below is justified in giving a direction to the appellant-insurance company to pay the compensation amount first to the claimant and then to recover the same by initiating execution proceedings for recovery of the compensation, if any, paid by it?

I have gone through the award impugned in the present appeal and also the pleadings and the evidence available in the case record.

The claimant's contention is that on 22.04.2008 while he was proceeding towards Dwarakanagar on a motorcycle bearing registration

No.AP31AT-732 when he reached the signal point near NAD Cross-Road at about 4 p.m, a TATA Sumo bearing registration No.AP31X-2297 driven by its driver in a rash and negligent manner came towards his motorcycle in a negligent way on wrong side and hit the motorcycle on which he was proceeding towards Dwarakanagar, and as the result of it, he sustained injuries. During course of examination of the claimant, he deposed the same facts.

The trial Judge placing reliance on the evidence of the claimant, whose evidence was corroborated on all aspects with Exs.A1 to A13, held that on account of rash and negligent driving of TATA Sumo bearing registration No.AP31X-2297 by respondent No.2 herein, who was the owner-cum-driver of it, the claimant sustained injuries. The insurance company though disputed the evidence of PW 1, who deposed in clear terms the way in which the accident took place, it did not choose to examine any witness to rebut his testimony. On the other hand, the appellant-insurance company who took a defence in its counter that it was not given intimation about the accident and that the owner of the crime vehicle contravened the provisions of Sections 158 and 6 of the M.V.Act, came with the version that the claimant himself was instrumental in occurrence of the accident and due to the negligent driving of the motorcycle by him the accident in question took place.

In proof of the plea of contributory negligence on the part of the claimant, no evidence supporting such contention was let in by the appellant. Two inconsistent stands were taken by the appellant insurance company in its counter, one expressing ignorance about the occurrence of the accident and that no intimation as such was given to it by the vehicle owner about the accident; and the next was that the claimant himself was responsible for the accident and that there was a contributory negligence on his part; No evidence in proof of any of the defences it raised in its counter and in the appeal grounds was adduced. The claimant who asserted that there was negligence on the part of the driver-cum-owner of the TATA Sumo bearing registration No.AP31X-2297 and due to the negligent driving of the same by respondent No.2 he met with an accident, examined himself as PW 1 and marked Exs.A1 to A13. Relying on the unshuttered testimony of PW 1 whose evidence was fully supported by Exs.A1 to A13 and Ex.X1, the court below had rightly held that the driver of the TATA Sumo bearing registration No.AP31X-2297 (respondent No.2 herein) was responsible for causing the accident to the claimant.

The appellant having pleaded that no intimation as such is given to it by the owner of the crime vehicle about the accident in its counter and attributed contravention of the provisions of Sections 158 and 6 of M.V.Act as against him, had taken altogether different stands that the claimant himself is responsible for the occurrence of the accident and that there is contributory negligence on his part etc, in proof of any of above plea of defences, no evidence is let in. On this count, the appeal filed by the insurance company challenging the finding of the court below on the aspect of negligence attributed to the claimant fails.

The evidence given by PWs 1 and 2 regarding the nature of injuries and the treatment provided is thoroughly appreciated by the court below for granting of compensation of Rs.1,00,000/-. Negating the evidence given by them in this regard, no evidence is adduced by the appellant. The court below cannot be faulted for granting of compensation of Rs.1,00,000/- to the claimant, accepting the contention of the appellant which has not made any endeavour to negate the evidence given by PW 1 and PW 2 in so far as the nature of injuries and the medical treatment etc.

So far as the other contentious issue relating to fastening of the initial liability of payment of compensation to the claimant by the appellant herein is concerned, it is true that on appreciation of the evidence of RWs 1 and 2, the employee in the appellant-insurance company, and an employee in RTA department and Exs.B2 to B4 and Ex.X2 and X3 the trial Judge has held that terms and conditions of the policy are breached by respondent No.2 herein. According to the appellant-insurance company, the court below ought not to have fastened the initial payment of compensation as against him having felt that the terms and conditions of the policy taken in respect of the crime vehicle are breached by respondent No.2 herein. So far as this contention of the appellant is concerned, the rule position laid down by the Apex Court in case in *National Insurance Co. Ltd. vs. Swaran Singh and Ors*[1] is clear so far as fixing the liability as against the insurance company when the driver has no valid and effective driving licence.

The rule position as laid down by the Apex Court in the said judgment is reproduced hereunder for ready reference:

> "103. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the

[1] I(2004)ACC1

same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefore against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage."

Placing reliance on the above legal proposition, the court below has rightly fixed the initial liability of payment of compensation as against the appellant-insurance company by giving liberty to it to recover the compensation, if any paid by it, by initiating execution proceedings as against the owner of the crime vehicle. Therefore, the court below cannot be found fault for fixing of initial liability of payment of compensation as against the appellant. I find no merit in the contentions raised by the appellant-insurance company in this regard.

In the result, the appeal filed by the appellant-insurance company as against the award in M.V.O.P.No.1126 of 2008 fails, and the same is hereby dismissed accordingly. But there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

J.UMA DEVI,J

Date: 18.09.2018
Mjl/Dsr